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## **Too Much One-man Rule and Too Many Symbols Of It!**

John Pyke

Predictably enough, republicans are claiming that the resignation of the Governor-General proves that the system is “broke”, and monarchists are denying it. Though Prime Minister Howard is in the monarchist camp, his insistence that it is up to him, and to him alone, to choose a successor demonstrates that there *is* something wrong with our system of government. It may not be “broke” – it will still struggle along - but it is not working as a system of representative government should work. It leaves powers that should be exercised by, at least, a group of people, if not all of the people, in the hands of one person.

The English, from whom we inherit most of our constitutional ideas, used to suffer under one-person rule, but they fought against it. By the time of Queen Victoria, Walter Bagehot could write, in *The English Constitution*, that the real system of government underlying the pomp of the monarchy was Cabinet government - “government by a committee of Parliament”. Though one Minister was “prime”, decisions were made by consensus or majority of the group of Ministers and they could only remain Ministers while they commanded the support of the majority of the Parliament. This is the system that we were supposed to have inherited. It is safer than the old system of vesting all power in one King or Queen who may be a tyrant, or the American system of vesting all executive power in one President who may, like Nixon, go at least half-mad on inappropriately-prescribed prescription drugs. A committee is less likely to make a mad or erratic decision.

Yet through the twentieth century Prime Ministers in both England and Australia have been quietly working to steal the power to make some decisions away from the “committee” that should make them. In both countries, Prime Ministers (and, in the States, Premiers) have insisted that the choice of election dates is theirs alone. Here, many Prime Ministers in succession have insisted that they and they alone have the power to select a Governor-General. The Constitution does not say this, so one might expect that these decisions are made, like all the other major decisions, by the Cabinet. Yet we are supposed to believe that the power to make this decision is the Prime Minister’s alone, simply because PM after PM has asserted it! The leading English author on constitutional conventions, Geoffrey Marshall, says that repeated practice alone is not enough to justify a claim that a convention exists; a good reason for the convention is also necessary. He notes there is no good reason for a Prime Minister to have a monopoly on choice of election dates. There is also no good reason why the PM should have the power to choose a Governor-General – the job

should at least be done collectively by Cabinet, and of course many Australians – a majority according to some surveys – think it should be done by the whole people.

Now this Prime Ministerial monopoly *could* be remedied without changing a word of our Constitution. All that would have to happen is that a few Prime Ministers in a row should admit that these major decisions should be made by the Cabinet. Yet the Constitution *is* also part of the problem. It is written in language that presupposes one-person rule. Section 61 pretends that executive power is vested in the Queen and exercised by the Governor-General. It doesn't tell the reader anything about Bagehot's rule by committee, and, by not mentioning that, it encourages Prime Ministers to think that, as to some types of decisions, they are Henry VIII.

This again could be remedied without scrapping the monarchy completely. We could amend the Constitution so it tells the truth about our executive government and makes it clear that executive power is really vested in the Cabinet. [That would be a great help to me as a teacher – I wouldn't have to tell my students "This is what section 61 says but this is what it means."]

But in the end the monarchy is part of the problem. I have argued for some time that the strongest argument against the monarchy is not that the Queen lives in, and primarily belongs to, another land. The strongest argument is that monarchy is symbolic of one-person rule (*and*, of course, the one person has to come from one old family). It is not un-Australian simply because it is English, it is un-Australian because it is incompatible with our ideas of democracy and equal opportunity for all. If the Governor-General's troubles and the Prime Minister's insistence on his almost-royal prerogative power to choose a replacement help us all to realise that we should remove all signs of one-person rule from our Constitution, they will in the end have done democracy a service.

John Pyke lectures in Constitutional Law at QUT School of Law. He is a campaigner not only for an Australian republic but for reform that makes constitutions easier to read and to teach about (two sections in the *Constitution of Queensland 2001* are there as a direct result of his submissions to the Queensland Parliament). His partly-completed Web text, *Government Under a Book of Rules*, can be found at <http://ozconstinfo.freehomepage.com/bookofrules/>